

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

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|-----------------|---|-------------------------------------|
| SHERIL A. CARR, |) | |
| |) | Case No. 7:07cv00001 |
| Plaintiff, |) | |
| |) | |
| v. |) | ORDER |
| |) | |
| HANK HAZELWOOD, |) | |
| |) | By: Jackson L. Kiser |
| Defendant. |) | Senior United States District Judge |
| |) | |

Plaintiff Sheril A. Carr brings this suit pursuant to 42 U.S.C. § 1983 alleging that Defendant Hank Hazelwood violated her constitutional rights by sexually assaulting her while she was housed at the Pittsylvania County Jail on April 16, 2006. Defendant moved for summary judgment and the court referred the matter to United States Magistrate Judge Michael F. Urbanski for a report and recommendation, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge subsequently filed a report, finding that Defendant waived the affirmative defense of failure to exhaust, that Carr did, in fact, exhaust her available administrative remedies as required by 42 U.S.C. § 1997e(a), and that the Court should deny Defendant's motion for summary judgment. Defendant filed objections within the ten days allotted under 28 U.S.C. § 636(b)(1)(C) and Plaintiff filed a timely response to Defendant's objections pursuant to Federal Rule of Civil Procedure 72(b). Having reviewed the report and recommendation, the objections and responses thereto, and pertinent portions of the record *de novo* in accordance with Federal Rule of Civil Procedure 72(b)(3), the Court agrees with the Magistrate Judge's recommendation.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that Defendant's objections are **OVERRULED**, the Magistrate Judge's report and recommendation is **ADOPTED** in its entirety, and the Defendant's motion for summary judgment is **DENIED**.

The Clerk is directed to send a copy of this *Order* to counsel of record as well as to Magistrate Judge Urbanski.

ENTERED this 3rd day of November, 2008.

s/Jackson L. Kiser
Senior United States District Judge